SUPREME COURT, U. S.

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

_____ Term, 1974

No. 74-189

MARY IM, ELIZABETH IM and PATRICIA IM, minors, by their parent and natural guardian, HO SUK IM,
Petitioners,

vs.

ROBERT BORK, Attorney General of the United States of America, and BERTRAM BERNARD, District Director of Immigration and Naturalization for the Western District of Pennsylvania,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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IN THE

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No. _____

MARY IM, ELIZABETH IM, and PATRICIA IM, minors, by their parent and natural guardian, HO SUK IM,

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The petitioners, MARY IM, ELIZABETH IM and PATRICIA IM, minors, by their parent and natural guardian, HO SUK IM, respectfully pray that a writ of certiorari issue to review the judgment order of the United States Court of Appeals for the Third Circuit entered in this proceeding on July 1, 1974.

Opinion Below

No opinion was rendered by either the Court of Appeals or by the United States District Court for the Western District of Pennsylvania. The Judgment Order of the Court of Appeals and the Order of the District Court were entered without opinions. Both of said Orders are attached hereto as Exhibits "A" and "B" respectively.

Jurisdiction

The judgment of the Court of Appeals for the Third Circuit was entered on July 1, 1974, and this petition for certiorari was filed within 90 days of that date. This court's jurisdiction is invoked pursuant to Title 28 United States Code § 1254 (1).

Question Presented

1. Whether the minor American-born citizen children of alien exchange visitors have standing under Title 5, United States Code § 702, the Administrative Procedure Act, to challenge and prevent the deportation of their parents when said deportation will constitute either a *de facto* deportation of said children or a denial to said children of the benefits of a normal parent-child relationship.

Statutory Provisions Involved

United States Code, Title 5:

§ 702. Right of review

> A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.

United States Code, Title 8:

§ 1105a. Judicial review of orders of deportation and exclusion—Exclusiveness of procedure

(a) The procedure prescribed by, and all the provisions of sections 1031 to 1042 of Title 5, shall apply to, and shall be the sole and exclusive procedure for, the judicial review of all final orders of deportation heretofore or hereafter made against aliens within the United States pursuant to administrative proceedings under section 1252(b) of this title or comparable provisions of any prior Act, .

United States Code, Title 8:

§ 1252. Apprehension and deportation of aliens-Arrest and custody; review of determination by court

Proceedings to determine deportability: removal expenses

(b) A special inquiry officer shall conduct proceedings under this section to determine the deportability of any alien, and shall administer oaths, present and receive evidence, interrogate, examine, and cross-examine the alien or witnesses, and, as authorized by the Attorney General, shall make determinations, including orders of deportation. Determination of deportability in any case shall be made only upon a record made in a proceeding before a special inquiry officer, at which the alien shall have reasonable opportunity to be present, unless by reason of the alien's mental incompetency it is impracticable for him to be present, in which case the Attorney General shall prescribe necessary and proper safeguards for the rights and privileges of such alien. If any alien has been given a reasonable opportunity to be present at a proceeding under this section, and without reasonable cause fails or refuses to attend or remain in attendance at such proceeding, the special inquiry officer may proceed to a determination in like manner as if the alien were present. In any case or class of cases in which the Attorney General believes that such procedure would be of aid in making a determination, he may require specifically or by regulation

that an additional immigration officer shall be assigned to present the evidence on behalf of the United States and in such case such additional immigration officer shall have authority to present evidence, and to interrogate, examine and cross-examine the alien or other witnesses in the proceedings. Nothing in the preceding sentence shall be construed to diminish the authority conferred upon the special inquiry officer conducting such proceedings. No special inquiry officer shall conduct a proceeding in any case under this section in which he shall have participated in investigative functions or in which he shall have participated (except as provided in this subsection) in prosecuting functions. Proceedings before a special inquiry officer acting under the provisions of this section shall be in accordance with such regulations, not inconsistent with this chapter, as the Attorney General shall prescribe. Such regulations shall include requirements that—

(1) the alien shall be given notice, reasonable under all the circumstances, of the nature of the charges against him and of the time and place at which the proceedings will be held;

(2) the alien shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose;

(3) the alien shall have a reasonable opportunity to examine the evidence against him, to present evidence in his own behalf, and to cross-examine witnesses presented by the Government; and

(4) no decision of deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence.

The procedure so prescribed shall be the sole and exclusive procedure for determining the deportability of an alien under this section. In any case in which an alien is ordered deported from the United States under the provisions of this chapter, or of any other law or treaty, the decision of the Attorney General shall be final. In the discretion of the Attorney General, and

under such regulations as he may prescribe, deportation proceedings, including issuance of a warrant of arrest, and a finding of deportability under this section need not be required in the case of any alien who admits to belonging to a class of aliens who are deportable under section 1251 of this title if such alien voluntarily departs from the United States at his own expense, or is removed at Government expense as hereinafter authorized, unless the Attorney General has reason to believe that such alien is deportable under paragraphs (4) to (7), (11), (12), (14) to (17), or (18) of section 1251(a) of this title. If any alien who is authorized to depart voluntarily under the preceding sentence is financially unable to depart at his own expense and the Attorney General deems his removal to be in the best interest of the United States, the expense of such removal may be paid from the appropriation for the enforcement of this chapter.

Statement of the Case

Petitioners herein are the minor children (ages 1½, 3½ and 4½ years old, respectively, at the time of the filing of the original complaint) of two Korean nationals who arrived in this country lawfully as exchange visitors.

Petitioners were all born in this country, however, and are therefore all American citizens.

Recent amendments to the Immigration and Naturalization Act, Title 8 United States Code, imposed upon exchange visitors the requirement that they abide by the provisions of Section 212 (e) of the Immigration and Naturalization Act which obliges said aliens to reside abroad in the country of their nationality or last residence for a period of two years before they could be eligible to receive immigration visas.

Through various administrative procedures beginning on July 8, 1971, Ho Suk Im, father of petitioners, sought to